IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.5142 OF 2005

DATE OF DECISION: 11.09.2006

Ramesh Chander and others ....Petitioners

Versus

State of Punjab and others ...Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr.Sanjeev Manrai, Advocate for the petitioners.

Mr. Ashok Aggarwal, Addl. A.G. Punjab with
Mr. B.S. Chahal, AAG Punjab,
for the respondents.

J.S. Khehar, J. (oral)

The petitioners are Home Guard volunteers holding the ranks of Platoon Commander/Sargents/Guards. They were engaged to discharge their duties in district Amritar. The pleadings of this case reveal that the petitioners have rendered service on daily wage basis for a period ranging between 10 to 20 years. It is also the case of the petitioners that the petitioners have filed CWP No.18173 of 2004 in this Court, wherein the petitioners are claiming regularisation in service on account of the long number of years of service rendered by them.

Despite the facts noticed hereinabove, the services of the petitioners were terminated by an order dated 2.12.2004. A perusal of the impugned order reveals that the following factual position persuaded the authorities to dispense with the services of the petitioners:-

" In response to above said letters, the following guards who

had created indiscipline at the Railway Station Amritsar while before boarding the train for going to Maharashtra in connection with election duty, may be terminated today the 2-12-2004 and they cannot be given any allowance from 3-12-2004. Immediate action in this regard should be taken on this letter."

It is the aforesaid extracted part of the order which is the basis as well as subject matter of challenge at the hands of the petitioners through the present writ petition.

It is the vehement contention of the learned counsel for the petitioners, that the impugned order is not only stigmatic but the same has been passed as a consequence of an alleged misconduct committed by the petitioners at the Railway Station Amritsar on 2.12.2004. It is, therefore, submitted that before any action could have been taken against the petitioners, they ought to have been afforded a reasonable opportunity of hearing in consonance with the rules of natural justice.

As against the aforesaid contention of the learned counsel for the petitioners, it is submitted at the hands of the respondents, that the petitioners have no civil rights, as they are engaged as volunteers. Since the petitioners had no civil rights, it is submitted, that their services could have been terminated on the basis of the factual position indicated in the impugned order. For the aforesaid purpose, learned counsel for the respondents has placed reliance on the decision rendered by the Supreme Court in State of Gujarat and another V. Akshay Amrutlal Thakkar, 2006

SCC (L&S) 290, wherein the Apex Court concluded as under:-

> " Guidelines 4 and 5 are relevant for the purpose of this case. Guideline 5 makes it clear that only a person who rendered services for a particular period as Taluka Home Guards Officer is eligible for appointment as District Commandant. The post of District Commandant is an honorary post. However, it is equivalent to a Gazetted Officer, Class I and the appointment is to be made by a Selection Committee consisting of the designated officers. It is found that in terms of guideline 4, an undertaking is given that the person selected is not to be a member of any political party and shall not be led by any communal institute and political party and nor shall he involve in any political or communal activities. As the authorities found that the respondents were in fact acting at variance with the undertaking given, their disengagement was felt necessary. View taken in the impugned judgments, therefore, cannot be maintained and the impugned judgments are set aside. The view expressed by the Division Bench of the High Court in Lataben Ramniklal Shah V. State of Gujarat taking the contrary view is the correct one.
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> As rightly contended by learned counsel for the appellant State, the order impugned in the writ petition was one of disengagement because the respondents did not act in the terms of the undertaking given. As the services rendered by the respondents were essentially honorary, no civil consequences

were involved. Section 6-B(1-A) empowers the Commandant to discharge any member of the Home Guards at any time if, in the opinion of the Commandant, the services of such member are no longer required. The provision does not necessarily refer to the discharge of a member from the Home Guards. The respondents in the instant case were not sought to be discharged as members of the Home Guards. Under the notification in question, the discharge was from duties as District Commandant, Home Guards."

In view of the position expressed by the Supreme Court in the judgment extracted above, namely, that persons engaged in an honorary capacity have no civil rights, and that, no formalities need to be complied with before terminating their services, we are of the view, that the petitioners are similarly situated as the respondents in the judgment extracted above. Volunteers are obviously persons engaged in an honorary capacity. In the aforesaid view of the matter, it is apparent that the petitioners cannot be deemed to be enjoying any civil rights, and as such, the termination of their services on account of the allegations levelled against them, cannot be considered to be in violation of law.

For the reasons recorded above, we find no merit in the instant writ petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

September 11, 2006.
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